

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
WESTERN DIVISION**

**UNITED STATES OF AMERICA,
STATE OF CONNECTICUT,
COMMONWEALTH OF
MASSACHUSETTS,**

Plaintiffs,

v.

GENERAL ELECTRIC COMPANY,

Defendant.

**CIVIL ACTION NOs.
99-30225, 99-30226, 99-30227-MAP
(Consolidated)**

ELEVENTH MODIFICATION OF CONSENT DECREE

WHEREAS, on October 27, 2000, this Court entered a Consent Decree in this action between the United States, the Commonwealth of Massachusetts, the State of Connecticut (collectively the “governments” or “Plaintiffs”), the City of Pittsfield, the Pittsfield Economic Development Authority (“PEDA”), and the General Electric Company (“GE”) relating to the contamination at the GE-Pittsfield/Housatonic River Site (“Site”). Pursuant to the Consent Decree, GE is required to perform and/or pay for response actions to remediate contamination at the Site, to reimburse the Plaintiffs for certain response costs incurred with respect to the Site, and to take actions to address damages to natural resources.

WHEREAS, in order to facilitate prompt and effective implementation of the obligations under the Consent Decree, and to eliminate potential impairments to the generation of solar

power at a facility located near Silver Lake, the Plaintiffs and GE have agreed to modify the Statement of Work for Removal Actions Outside the River (“SOW”), Appendix E to the Consent Decree, as set forth below, and subject in part to the Court’s approval.

NOW, THEREFORE, Technical Attachment I to the SOW (Appendix E to the Consent Decree) is hereby modified as follows:

First, Section 6.1 Performance Standards currently provides:

- 6.1.(5) Following bank soil removal and slope restoration activities, GE shall plant a line of trees along the recreational portions of the eastern and northern banks (non-privately owned areas), spaced approximately 8 feet apart. GE shall plant an understory community in oblong patches approximately 10 feet wide and 20 feet long along these banks, spaced approximately 50 feet apart, with shrubs within each patch on approximate four-foot centers.

Section 6.2.2 of Technical Attachment I provides additional detail, requiring these trees to be “black willow and eastern cottonwood,” both of which are tall-growing species.

To address concerns that the proposed plantings may inhibit nearby solar power generation, the Parties hereto agree that the forgoing Performance Standard shall be modified to provide as follows:

- 6.1. (5) Following bank soil removal and slope restoration activities, GE shall plant the following:
- a row of trees along the eastern and northwestern lake shore adjacent to Fourth Street;
 - single or double rows of shrubs along the top of the armor stone along the eastern and northwestern lake shore, and portions of the northern lake shore;
 - oblong patches of shrubs along portions of the northern lake shore at approximately 26 locations; and
 - clustered trees and shrubs less than approximately 20 feet in height at maturity in approximately 31 dense groups along portions of the northern lake shore.

Second, the first two paragraphs of Section 6.2.2 currently provide:

Following the bank soil removal activities and the restoration of the natural slope of the banks, GE shall plant the non-privately owned portions of the banks with black willow and eastern cottonwood in the canopy stratum. A single line of trees will be planted along the eastern and northern banks of Silver Lake. Trees will be planted approximately 4 feet back from the water's edge, with a spacing of approximately 8 feet between each tree.

To further increase structural diversity and enhance the available habitat, GE shall also plant an understory community along the eastern and northern shores of Silver Lake. Red-osier dogwood, northern arrowwood, and winterberry holly will be planted in oblong patches approximately ten-feet wide by 20-feet long, oriented so the long axis parallels the bank. The patches will be planted adjacent to the bank and will be spaced approximately 50 feet between patches. The understory species will be uniformly planted so that there is four-foot spacing between plants within the patch.

To address concerns that the proposed plantings may inhibit nearby solar power generation, the forgoing passage from Section 6.2.2 is replaced by the following provision:^{1/}

Following bank soil removal and slope restoration activities, GE shall plant the following:

- a row of trees along the eastern and northwestern lake shore adjacent to Fourth Street;
- single or double rows of shrubs along the top of the armor stone along the eastern, and northwestern lake shore and portions of the northern lake shore;
- oblong patches of shrubs along portions of the northern lake shore at approximately 26 locations; and
- clustered trees and shrubs less than approximately 20 feet in height at maturity in approximately 31 dense groups along portions of the northern lake shore.

The species of trees and shrubs are subject to approval by EPA and the Trustees.

^{1/} Unlike the modification to Section 6.1(5), which is a modification of a Performance Standard for which the Court's approval is required pursuant to Paragraph 217 of the Consent Decree, this modification is a non-material modification of the SOW that is effective upon filing with the Court, pursuant to Paragraph 216 of the Consent Decree. Although approval by the Court and by parties other than GE and the United States is not required, this change is included in these Modification papers for efficiency and ease of future reference.

THE UNDERSIGNED PARTY enters into this Eleventh Modification of Consent Decree in the matter of United States, the Commonwealth of Massachusetts, and the State of Connecticut v. General Electric Company, relating to the General Electric-Pittsfield/Housatonic River Site.

UNITED STATES OF AMERICA

7/31/12
Date

C. A. Fiske
Catherine Adams Fiske
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources
Division
Department of Justice
One Gateway Center
Suite 616
Newton, MA 02458

CARMEN M. ORTIZ
United States Attorney
District of Massachusetts

KAREN L. GOODWIN
Assistant United States Attorney
District of Massachusetts
1550 Main Street
Springfield, MA 01103
413-785-0235

THE UNDERSIGNED PARTY enters into this Eleventh Modification of Consent Decree in the matter of United States, the Commonwealth of Massachusetts, and the State of Connecticut v. General Electric Company, relating to the General Electric-Pittsfield/Housatonic River Site.

COMMONWEALTH OF MASSACHUSETTS

1/17/12
Date

Nancy E. Harper
Nancy E. Harper
Assistant Attorney General
Environmental Protection Division
1 Ashburton Place
Boston, MA 02108
617-727-2200

THE UNDERSIGNED PARTY enters into this Eleventh Modification of Consent Decree in the matter of United States, the Commonwealth of Massachusetts, and the State of Connecticut v. General Electric Company, relating to the General Electric-Pittsfield/Housatonic River Site.

STATE OF CONNECTICUT

July 18, 2012
Date

John M. Looney
John M. Looney
Assistant Attorney General
State of Connecticut
P.O. Box 120
55 Elm Street
Hartford, CT 06141-0120
860-808-5259

THE UNDERSIGNED PARTY enters into this Eleventh Modification of Consent Decree in the matter of United States, the Commonwealth of Massachusetts, and the State of Connecticut v. General Electric Company, relating to the General Electric-Pittsfield/Housatonic River Site.

GENERAL ELECTRIC COMPANY

7/12/12
Date

Roderic J. McLaren
Roderic J. McLaren
Counsel - Pittsfield/Housatonic River Remediation
General Electric Company
Corporate Environmental Programs
159 Plastics Avenue
Pittsfield, MA 01201

The attached Eleventh Modification of Consent Decree in the matter of United States, the Commonwealth of Massachusetts, and the State of Connecticut v. General Electric Company, relating to the General Electric-Pittsfield/Housatonic River Site is hereby approved.

SO APPROVED THIS 13th DAY OF September, 2012.

A handwritten signature in black ink, reading "Michael A. Ponsor". The signature is fluid and cursive, with the first name "Michael" being the most prominent part.

Michael A. Ponsor
United States District Judge